

Message Text

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TO AMEMBASSY BONN

INFO AMCONSUL MUNICH

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E. O. 11652: N/ A

TAGS: EIND, GW

SUBJ: REQUEST FOR OBSERVER STATUS FOR U. S. AT EUROPEAN

PATENT CONVENTION CONFERENCE, SEPT. - OCT. 1973

1. BEGIN SUMMARY: THE DIPLOMATIC CONFERENCE TO FORMULATE THE EUROPEAN PATENT CONVENTION (EPC), SCHEDULED TO BE HELD IN MUNICH FROM SEPTEMBER 10 TO OCTOBER 6, 1973 IS OF GREAT INTEREST TO THE UNITED STATES GOVERNMENT. THE USG WISHES TO BE INVITED AS AN OBSERVER TO THE CONFERENCE AND THEREFORE THE EMBASSY IS REQUESTED TO MAKE A FORMAL APPROACH TO THE FEDERAL REPUBLIC GOVERNMENT (FRG) WITH THE VIEW TO PRESENTING SUGGESTIONS OF VARIOUS POSSIBLE BASES UPON WHICH OBSERVER STATUS COULD BE GRANTED TO A SELECT GROUP OF

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COUNTRIES. END SUMMARY.

2. THE UNITED STATES, TOGETHER WITH THE FRG AND THE UNITED KINGDOM, PLAYED MAJOR ROLES IN FORMULATING THE PATENT COOPERATION TREATY (PCT). THE PCT WAS SUBMITTED TO THE SENATE FOR ADVICE AND CONSENT IN SEPTEMBER 1972. THE PCT, WHICH IS DESIGNED TO BECOME WORLDWIDE IN SCOPE, IS CLOSELY RELATED TO THE REGIONAL EPC; SO CLOSELY, IN FACT, THAT THE COUNCIL OF THE EUROPEAN COMMUNITIES HAS BEEN CONSIDERING THE MEANS TO ACHIEVE SIMULTANEOUS ENTRY INTO FORCE OF THE EPC AND THE PCT.

3. BY ATTENDING THE EPC CONFERENCE AS OBSERVERS, THE U. S. WILL BE IN A BETTER POSITION TO ASSESS THE RELATIONSHIP AND CONSISTENCY OF THE VARIOUS PROCEDURES OF THE TWO AGREEMENTS. THIS WILL PROVIDE IMPORTANT BACKGROUND NEEDED TO FURTHER PCT IMPLEMENTATION IN A MANNER WHICH WILL BE MUTUALLY BENEFICIAL TO EUROPEAN AND U. S. PARTICIPANTS AND WILL ENABLE US TO APPRISE U. S. NATIONALS OF THE BENEFITS OF THE EUROPEAN CONVENTIONS. THIS IS MOST IMPORTANT TO THE USG AS U. S. APPLICANTS FOR PATENTS WILL COMPRISE THE LARGEST NUMBER OF NATIONALS OF NON- EPC STATES FILING FOR PATENTS IN THE EPC COUNTRIES EITHER DIRECTLY UNDER THE EPC OR INDIRECTLY THROUGH THE PCT.

4. INFORMAL EFFORTS THROUGH CORRESPONDENCE WITH KEY FRG PATENT OFFICIALS TO REACH A FORMULA WHEREBY THE UNITED STATES COULD BE GRANTED OBSERVER STATUS TO THE EPC CONFERENCE HAVE NOT BEEN SUCCESSFUL. (COPY OF CORRESPONDENCE FOR BACKGROUND INFORMATION BEING FORWARDED BY DS-4) HOWEVER, WE CONTINUE TO BELIEVE THAT THE PROPOSED FORMULAE WERE BASICALLY SOUND AND REASONABLE.

5. BASES FOR GRANTING OBSERVER STATUS: IN VIEW OF THE CLOSE RELATIONSHIP WHICH WILL EXIST BETWEEN THE REGIONAL EPC AND THE WORLD- WIDE PCT, ONE OF THE MOST LOGICAL BASES FOR GRANTING OBSERVER STATUS TO THE EPC CONFERENCE WOULD BE TO INCLUDE THOSE STATES WHICH ARE PROSPECTIVE INTERNATIONAL SEARCHING AUTHORITIES UNDER THE PATENT COOPERATION TREATY. IN ADDITION TO THE FRG, AUSTRIA AND SWEDEN, WHO HAVE INDICATED AN INTEREST IN BECOMING INTERNATIONAL LIMITED OFFICIAL USE

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SEARCHING AUTHORITIES AND WHO WILL, OF COURSE, BE PARTICIPANTS IN THE EPC CONFERENCE, THE OTHER COUNTRIES THAT HAVE INDICATED SUCH AN INTEREST ARE THE UNITED STATES, JAPAN AND THE USSR. UNDER THIS FORMULA, THE LAST THREE STATES WOULD BE INVITED AS OBSERVERS, AS THEY ALL WILL PLAY KEY ROLES IN THE PCT.

6. A SECOND FORMULA FOR ACCORDING OBSERVER STATUS TO THE UNITED STATES WOULD BE BASED UPON THE FACT THAT NO OTHER COUNTRY IS AS SINGULARLY AFFECTED BY THE CREATION OF THE EUROPEAN PATENT CONVENTION AS IS THE UNITED STATES. THIS IS DEMONSTRATED BY THE FACT THAT, IN 1971, U. S. APPLICANTS FOR PATENTS IN THE 21 PROSPECTIVE EPC COUNTRIES NUMBERED 67,368. THE NUMBER OF U. S. APPLICATIONS ORIGINATING FROM APPLICANTS IN THE 21 EPC COUNTRIES WAS 22,229. THE NEXT HIGHEST FILING FIGURES INVOLVED JAPAN, WITH 16,040 APPLICATIONS FILED IN THE 21 COUNTRIES, AND 13,240 APPLICATIONS FILED IN JAPAN BY APPLICANTS OF THE 21 EPC COUNTRIES.

7. ON THE BASIS OF A FIGURE OF 10,000 APPLICATIONS PER YEAR GOING IN EITHER DIRECTION, THE UNITED STATES AND JAPAN COULD BE ACCORDED OBSERVER STATUS. IF THE FIGURE WERE TO BE LOWERED TO 5,000 APPLICATIONS FILED IN COUNTRIES BY APPLICANTS FROM THE 21 EPC COUNTRIES, ONLY AUSTRALIA (5,002), CANADA (7,830), JAPAN (13,240) AND THE UNITED STATES (22,229) WOULD QUALIFY.

8. ACTION REQUESTED: IT IS REQUESTED THAT THE EMBASSY FORMALLY EXPRESS TO THE FRG BY DIPLOMATIC NOTE THE EXTENSIVE U. S. INTEREST IN THE EUROPEAN PATENT CONVENTION CONFERENCE SCHEDULED FOR SEPTEMBER 10 TO OCTOBER 6, 1973, INDICATING, IF DEEMED APPROPRIATE, USG AWARENESS OF PHYSICAL LIMITATIONS IMPOSED BY THE CONFERENCE SITE, WHICH MAY NECESSITATE A LIMIT IN THE NUMBER OF INVITATIONS WHICH CAN BE EXTENDED TO NON- EPC COUNTRIES TO ATTEND AS OBSERVERS. IN VIEW OF THE FRG'S CONCERN ABOUT SPACE LIMITATIONS AT THE CONFERENCE AND TAKING INTO ACCOUNT THE FACT THAT THE U. S. WOULD BE IN OBSERVER STATUS, THE EMBASSY SHOULD STRESS THAT THE USDEL WOULD BE LIMITED TO USG OFFICIALS ONLY. WE WOULD PLAN TO HAVE NO RPT NO PRIVATE LIMITED OFFICIAL USE

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ADVISERS SUCH AS WAS THE CASE AT THE PCT DIPLOMATIC CONFERENCE IN WASHINGTON IN 1971. THE EMBASSY SHOULD THEN SUGGEST, CITING IN CONSIDERABLE DETAIL INFORMATION PROVIDED ABOVE, THE BASES UPON WHICH A SELECT GROUP, INCLUDING THE UNITED STATES, COULD BE INVITED AS OBSERVERS TO THE CONFERENCE.

9. THE EMBASSY ALSO IS REQUESTED TO KEEP THE DEPARTMENT INFORMED OF ANY FRG REACTION TO THE DIPLOMATIC NOTE AND, OF COURSE, THE FRG REPLY. RUSH

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